

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAUN MORGAN,

Plaintiff,

v.

ANTHONY PORZIO, II,

NOTICE OF REMOVAL

Civil Action. No.

Defendant.

Pursuant to 28 U.S.C. §§ 1441(b) and 1446, defendant Anthony Porzio, II, by and through his attorneys, Kenney Shelton Liptak Nowak LLP, hereby provides notice of removal of this action from the New York State Supreme Court, Erie County, to this Court, and in support thereof states:

1. Plaintiff Shaun Morgan is a resident of the State of New York.
2. Defendant Anthony Porzio, II is a resident of the State of New York.
3. On or about September 27, 2007, Shaun Morgan filed his Summons and Complaint in this action seeking money damages (attached as Exhibit A) in New York Supreme Court, Erie County. Upon information and belief, the Complaint is the only process and/or pleading in this action to date.
4. Defendant, Anthony Porzio, II, was formally served with the Summons and Complaint sometime after September 27, 2007.
5. In his Complaint, Shaun Morgan seeks to recover for alleged personal injuries sustained in a dog bite incident that occurred on July 12, 2006. Plaintiff is seeking to recover for an alleged deprivation of privileges and immunities under the United States Constitution Amendments 4, 5 and § 1 of Amendment 14. Plaintiff also seeks recovery for an alleged violation of Title 42 of the United States Code § 1983.
6. Anthony Porzio, II removes this action pursuant to 28 U.S.C.A. § 1331 based upon the fact

that this action arises under the Constitution Laws or treaties of the United States.

7. Notice of filing of this Notice of Removal, along with this Notice of Removal, will be promptly filed with the Clerk of the New York Supreme Court, Erie County, and service of this Notice of Removal will be promptly served on all adverse parties herein.

DATED: October 30, 2007

Respectfully submitted,

KENNEY SHELTON LIPTAK NOWAK LLP



By: Rodger P. Doyle, Jr., Esq.

Attorneys for Defendant Anthony Porzio, II

14 Lafayette Square
Suite 510 Rand Building
Buffalo, New York 14203
Tel: (716) 853-3801
Fax: (716) 853-0265

TO: Scott M. Schwartz, Esq.
Lipsitz Green Scime Cambria LLP
Attorneys for Plaintiff Shaun Morgan
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
Tel: (716) 849-1333

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAUN MORGAN,

Plaintiff,

v.

ANTHONY PORZIO, II,

Defendant.

CERTIFICATE OF SERVICE

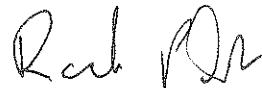
Civil Action. No.

I hereby certify that on October 30, 2007, I served upon the following:

Scott M. Schwartz, Esq.
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924

Attorneys for Plaintiff Shaun Morgan

the foregoing Notice of Removal, together with the attached Exhibit A, by deposition a copy of same in a United States Postal Service Depository in a sealed envelope with prepaid first-class postage.



Rodger P. Doyle, Jr., Esq.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SHAUN MORGAN
300 Gold Street
Buffalo, New York 14216

Plaintiff,

vs.

ANTHONY PORZIO, II
210 Gold Street
Buffalo, New York 14216

Defendant.

Index No.

Plaintiff designates Erie
County as the place of trial

The basis of venue is
plaintiff's residence

SUMMONS

Plaintiff resides at
300 Gold Street
Buffalo, New York 14216

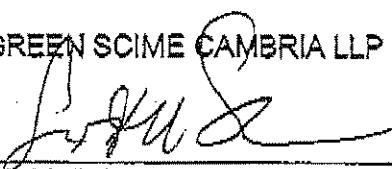
County of Erie

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

DATED: Buffalo, New York
September 27, 2007

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 

Scott M. Schwartz
Attorneys for Plaintiff
Office and P.O. Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333

09/27/2007 /
ERIE COUNTY /
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SHAUN MORGAN
300 Gold Street
Buffalo, New York 14216

COMPLAINT

Plaintiff,
vs.

Index No.

ANTHONY PORZIO, II
210 Gold Street
Buffalo, New York 14216

Defendant.

FILED
Actions & Proceedings
SEP 27 2007
ERIE COUNTY
CLERK'S OFFICE

Plaintiff, above named, by his attorneys, LIPSITZ GREEN SCIME CAMBRIA LLP, for his Complaint against the defendants, ANTHONY PORZIO, II, alleges:

AS FOR A FIRST CAUSE OF ACTION,
AGAINST DEFENDANT, ANTHONY PORZIO, II,
THE PLAINTIFF, SHAUN MORGAN, ALLEGES:

1. The plaintiff, SHAUN MORGAN, at all times hereinafter mentioned, was and still is a resident of the City of Buffalo, located within the County of Erie and the State of New York.

2. Upon information and belief, at all times hereinafter mentioned, the defendant, ANTHONY PORZIO, II, was and still is a resident of the City of Buffalo, located within the County of Erie and the State of New York.

3. Upon information and belief, at all times herein mentioned, the defendant, ANTHONY PORZIO, II, was the owner of a certain dog hereinafter referred to as a tan and black german shepherd", which is the same dog hereinafter alleged to have attacked and bitten the plaintiff, SHAUN MORGAN.

4. Upon information and belief, at all times hereinafter mentioned, the defendant, ANTHONY PORZIO, II, harbored and kept the dog, a tan and black german shepherd, upon a premises and his residence commonly known as 210 Gold Street, within the City of Buffalo, County of Erie and the State of New York.

5. Upon information and belief, the dog, a tan and black german shepherd, was of a temperament making it likely that it would attack and bite people.

6. Upon information and belief, heretofore and prior to the occurrence hereinafter set forth, the dog, a tan and black german shepherd, had attacked and bitten at least one person in the past.

7. Upon information and belief, at all times herein mentioned, the defendant, ANTHONY PORZIO, II, was aware of the dangerous propensities of the dog, a tan and black german shepherd.

8. Despite the aforesaid knowledge of the dangerous propensities of the dog, a tan and black german shepherd, and in violation of the law, the defendant, ANTHONY PORZIO, II, continued to wrongfully keep and harbor the said dog.

9. On or about the 12th day of July, 2008, while the plaintiff, SHAUN MORGAN, was lawfully and properly walking in front of the aforesaid premises, the plaintiff, SHAUN MORGAN, was attacked and bitten by the dog, a tan and black german shepherd, hereinbefore alleged to have been owned, harbored and kept by the defendant, ANTHONY PORZIO, II.

10. Upon Information and belief, the aforesaid attack and biting occurred because of the carelessness, recklessness and negligence of the defendant.

11. As a result of the aforesaid accident, the plaintiff, SHAUN MORGAN, sustained bodily injuries and was painfully and seriously injured, and some of the injuries may result in permanent defects; was rendered sick, sore, lame and disabled; sustained pain and suffering and shock to his nerves and nervous system; was caused to and did seek medical aid and attention; was caused to be confined to hospital, bed and home; was caused to and did incur great medical expense and may incur further medical expense; was caused to be incapacitated from his usual activities and employment and may be further incapacitated.

12. Upon information and belief, the defendant, ANTHONY PORZIO, II, affirmatively created the dangerous and defective condition described herein.

13. This action falls within one or more of the exceptions set forth in CPLR § 1602.

14. As a result of the foregoing, the plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS FOR A SECOND CAUSE OF ACTION,
AGAINST DEFENDANT, ANTHONY PORZIO, II,
THE PLAINTIFF, SHAUN MORGAN, ALLEGES:**

15. Repeats, reiterates and realleges each every allegation contained in paragraphs "1" through "14" of this Complaint with the same force and effect as if fully set forth herein.

16. Upon information and belief, on or about the 10th day of September, 2006, the defendant, ANTHONY PORZIO, II, a City of Buffalo Police Officer, had the plaintiff, SHAUN MORGAN, falsely arrested and charged with Aggravated Cruelty to Animals

pursuant to § 353(a) of the Agriculture and Markets Law of the State of New York; and one count of Trespass in violation of Penal Law § 140.05.

17. Upon information and belief, at the time of the plaintiff, SHAUN MORGAN's arrest, the defendant, ANTHONY PORZIO, II, knew that the accusations made about the plaintiff were false.

18. Upon information and belief, the incident hereinbefore described and the resultant damages were caused as a result of the wrongful, unlawful, malicious and false arrest of the plaintiff, SHAUN MORGAN.

19. Upon information and belief, as a result of the foregoing, the plaintiff, SHAUN MORGAN, was injured in his good name and reputation and standing in the community and suffered extreme humiliation and emotional anguish, was caused to and did incur great expense, all to his damage in an amount which exceeds the jurisdictional limits of all lower Courts which would otherwise have otherwise jurisdiction.

**AS FOR A THIRD CAUSE OF ACTION,
AGAINST DEFENDANT, ANTHONY PORZIO, II,
THE PLAINTIFF, SHAUN MORGAN, ALLEGES:**

20. Repeats, reiterates and realleges each every allegation contained in paragraphs "1" through "19" of this Complaint with the same force and effect as if fully set forth herein.

21. While acting under Color of Law, in his official capacity as a City of Buffalo Police Officer, the defendant, ANTHONY PORZIO, II, deprived the plaintiff, SHAUN MORGAN, of privileges and immunities guaranteed to every citizen of the United States, including the plaintiff, SHAUN MORGAN, by the United States Constitution Amendments 4, 5 and § 1 of Amendment 14.

22. On or about the 10th day of September, 2006, the defendant, ANTHONY PORZIO, II, acting in his official capacity as a City of Buffalo Police Officer, pursuant to the authority granted to him while acting under Color of Law, had the plaintiff, SHAUN MORGAN, arrested and charged with Aggravated Cruelty to Animals pursuant to § 353(a) of the Agriculture and Markets Law of the State of New York; and one count of Trespass in violation of Penal Law § 140.05.

23. As a result of the aforesaid incidents, the plaintiff, SHAUN MORGAN, was caused to sustain serious injuries and as more fully set forth herein.

24. That the foregoing actions by said defendant, ANTHONY PORZIO, II, constitutes gross negligence and reckless disregard for and deliberate indifference to the deprivation of the rights and privileges of the plaintiff, SHAUN MORGAN, secured and protected to him by the Constitution and Laws of the United States.

25. As a result of the aforesaid actions, the plaintiff, SHAUN MORGAN, was unlawfully imprisoned unconstitutionally deprived of his liberty and otherwise, tortuously and maliciously harmed by the actions of the defendant, ANTHONY PORZIO, II, all in violation of Title 42 of the United States Code § 1983 *et seq.*

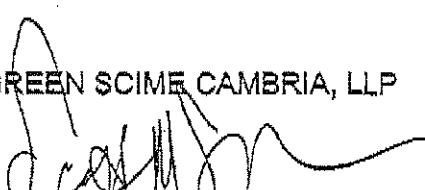
26. In addition to the injuries set forth herein, the plaintiff, SHAUN MORGAN, was subjected to great humiliation, mental and physical distress and was otherwise harmed in the amount which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

WHEREFORE, the plaintiff demand judgment against the defendant, ANTHONY PORZIO, II, in the First Cause of Action in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction; in the Second Cause of

Action in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction; in the Third Cause of Action in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction; and for such other, further or different relief as the Court may deem just and proper, together with the costs and disbursements of the action.

DATED: Buffalo, New York
September 27, 2007

LIPSITZ GREEN SCIME CAMBRIA, LLP

By: 

Scott M. Schwartz
Attorneys for Plaintiff
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Buffalo, New York 14202-3924
(716) 849-1333

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